The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STONCOR GROUP, INC., Plaintiff, v. CHRISTOPHER CAMPTON, an individual, and HI-TECH INTERIORS, INC., Defendants.	No. CV05-1225 DEFENDANT'S REPLY ON MOTION TO COMPEL Noted: Friday, November 25, 2005

Defendant submits this reply to plaintiff StonCor's opposition to defendant's Motion to Compel Discovery.

Since defendant's Motion to Compel was filed, defendant's counsel has received from plaintiff a paper copy of the p-file, dated 2001; four pages of materials price guidelines; documents related to employment policies; two compact disc recordings of e-mails; a preliminary expert witness report; and other documents. In the past two days, counsel also received plaintiff's managing agent's signature, under oath,[1] on defendant's First and Second Discovery Requests[2]. Defendant's counsel appreciates receiving this discovery from the plaintiff.

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[1] Plaintiff contended in its Opposition that a responding party's signature need not be verified. FRCP 33(b)(1)&(b)(2) require that each interrogatory be "answered separately and fully in writing *under oath*," by a party. FRCP 33(b)(2).

[2] Defendant's First and Second Interrogatories and Requests for Production are referred to

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However, in order for the defendant to be able to defend against the alleged trade secrets claims certain crucial discovery requests remain unanswered or incompletely answered. Defendant asks that this information be provided in response to reasonable discovery requests so that discovery of the plaintiff's case is not a case of "blind man's bluff." After the discovery produced since the motion to compel was filed, defendant narrows its remaining issues to the following:

1. **The "p-file.**" Defendant requested production of the p-file on July 20. *See* defendant's First Discovery Requests, RFP no. 5(n). On October 6, counsel asked for the same p-file that would have been in Chris Campton's possession at Stonhard. *See* Decl. in Support of Motion to Compel, *ex*. 65-66 (letter from B. Gaviria to B. Keeley, dated October 6, 2005). Plaintiff has described the p-file as containing trade secret information, directly relevant to this case. Plaintiff states that it is trying to recreate the current p-file to which defendant had access. While plaintiff produced a paper copy of the p-file as of 2001, the actual p-file plaintiff claims was accessible to Mr. Campton has not been produced. Mr. Neill says that "StonCor is in the process of recreating those parts of the SFA system that Campton would have access to." Declaration of Rick Neill, in opposition to Motion to Compel, ¶ A.5, at 2. It is not clear what happened to this system that requires that it be "re-created," or why it has taken the plaintiff nearly five months to produce a linchpin of the plaintiff's case, but it is clear that producing the exact data cannot be more important to the defense of this case.

2. **"Customer list" information**. From the beginning, the defendant requested that plaintiff identify all trade secrets plaintiff alleged were misappropriated. *See* First Discovery Requests, Int. no. 11. (Defendant also asked for an identification of customers since 2002, as well as all documents that relate or pertain to plaintiff's trade

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as "First and Second Discovery Requests." Answers to the First and Second Discovery Requests are located at Declaration in Support of Motion to Compel, exhibits 23-56.

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secrets or confidentiality policies or procedures. *See* First Discovery Requests, Int. no. 3, RFP no. 2. The plaintiff vaguely identified trade secrets as "customer *lists*, pricing and pricing policies and installer *lists*." Plaintiff has since obliquely referred to customer list data as resident on documents and computer files. No information about the customer lists were given in response to discovery, even though the First Discovery Requests required that documents be specifically described as to date, author, distribution, type of document, and a brief description of the documents' contents. *See* First Discovery Requests, Definition ¶ F, at 3. Subsequent testimony of the plaintiff demonstrates that these alleged trade secrets are manifest in documents, even though the documents have not been clearly identified. Defendant has attempted to speculate where it might find these trade secrets by asking for the p-file, the cost book, pricing policy information and identification of customers. To the extent that there was any question about defendant's request for production of "customer list" information, defendant's letter on October 6 asked for "a copy of the 'customer list,' including the list on the SFA system to which Chris Campton had access, as well as any compilation of customer data." *See* letter from B. Gaviria to B. Keeley, dated October 6, 2005. The defendant should not be required to guess what the customer list looks like: customer list documents should be identified with particularity and produced.

3. **Pricing and pricing policies**. Defendant asked specifically for a copy of all Costco Wholesale pricing structures, cost proposals, methodology, and identity of each document reflecting those pricing information. *See* First Discovery Requests, Int. no. 24 & RFP No. 18. Defendant also asked for all pricing policies again on October 6. *See* letter from B. Gaviria to B. Keeley, dated October 6, 2005. Defendant again asked for all documents related to Stonhard's price increases since January 1, 2002. *See* Second Discovery Requests, RFP no. 4. Defendant asks that discovery of this pricing information be compelled.

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4. **Trade secrets identification**. Again, to the extent that the request was unclear (and it is difficult to understand what is unclear about the request that plaintiff explain its trade secrets), defendant asked on October 6 for a "a copy of the written representation of any and all alleged trade secrets." *See* letter from B. Gaviria to B. Keeley, dated October 6, 2005. Defendant should be required to identify its trade secrets with clarity and particularity so that the defendant does not have to guess what those "trade secrets" are alleged to be.

5. **Costs and revenues**. Defendant made several requests for Costco revenues *See* First Discovery Requests, Int. no. 22. *See* First Discovery Requests, RFP no. 12. *See also* letter from B. Gaviria to B. Keeley, dated October 6, 2005. Plaintiff states that this information has been produced; however, defendant has not had an opportunity in the past few days to review this information; consequently, defendant maintains its request that this information be compelled. In addition, the "list price guidelines" produced do not appear to be the cost book. Cost of materials information should be produced as well.

6. **Former managers**. Defendant asked for the identity of former managers who have access and knowledge of the alleged trade secrets and are competing in the marketplace. *See* First Discovery Requests, Int. no. 6, 7 & 8. *See also* letter from B. Gaviria to B. Keeley, dated October 6, 2005. Defendant ask that this discovery be compelled.

Plaintiff's opposition complains that while plaintiff received a letter regarding discovery issues on October 6 (addressing many of the same issues raised in its previous letter of July 25), and that a conference of attorneys was held, that conference did not qualify as a FRCP 26 conference. Plaintiff acknowledged that it would "look into" the issues. No further action was taken by the plaintiff. It is unclear what more defendant should do to procure discovery.

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Defendant simply wants to see the case against it and asks the court to compel disclosure of that information.

Respectfully submitted this 23 day of November, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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